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**IN THE
COURT OF APPEALS OF INDIANA**

TAMMY M. WADE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 18A02-0712-CR-1095
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Wayne J. Lennington, Judge
Cause No. 18C05-0602-FC-1

May 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Tammy M. Wade appeals her conviction for Identity Deception, as a Class D felony, following a bench trial. She presents two issues for review, namely:

1. Whether the trial court abused its discretion when it excluded evidence of the relationship between Wade and the victim.
2. Whether the trial court reached inconsistent judgments.

We affirm.

FACTS AND PROCEDURAL HISTORY

From 1996 to 2005, Wade and Nicole N. Bernard (formerly Nicole N. Harris)¹ were in a relationship. The couple lived and worked together and shared joint checking and savings accounts. In 2005, Bernard received a \$1,500 charge card bill from Capitol One. Bernard stated that she had neither applied for the Capitol One card, nor had she made any charges. Bernard obtained a copy of the application, which was made using her name, address, birthdate, and social security number. However, the signature on the application was not Bernard's.

When Bernard asked Wade about the bill, Wade acknowledged that she had applied for and used the card, but she stated that she had applied for the card in her own name and had listed Bernard as a secondary user. Bernard then ended her relationship with Wade and asked her to move out. In a later conversation, Wade again told Bernard that the card was in Wade's name. And later still, Wade told Bernard that she would pay Bernard back.

¹ Nicole Harris married, becoming Nicole Bernard, sometime after the end of her relationship with Wade.

Bernard reported the unauthorized credit card application to the police, and the State charged Wade with one count of forgery, as a Class C felony, and one count of identity deception, as a Class D felony. At the conclusion of a bench trial on June 19, 2007, the court took the case under advisement. Later that day, the court found Wade not guilty of forgery but guilty of identity deception. On July 11, 2007, the court sentenced Wade to 18 months in the Indiana Department of Correction, suspended to probation; 90 days home detention as a condition of probation; and fines, costs, and restitution. On August 15, 2007, Wade filed a motion to correct error, which the trial court denied after a hearing. Wade now appeals.

DISCUSSION AND DECISION

Issue One: Exclusion of Evidence

A trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will reverse such a ruling only upon a showing of an abuse of discretion. Clark v. State, 804 N.E.2d 196, 198 (Ind. Ct. App. 2004). When reviewing a trial court's ruling on a motion to suppress, the appellate court will examine the evidence most favorable to the ruling, together with any uncontradicted evidence. State v. Joe, 693 N.E.2d 573, 574-75 (Ind. Ct. App. 1998), trans. denied. That is, we will neither reweigh the evidence nor judge the credibility of witnesses. Clark, 804 N.E.2d at 198. But error may not be based on a ruling excluding evidence unless a substantial right of a party is affected and the substance of the excluded evidence "was made known to the court by a proper offer of proof, or was apparent from the context within which questions were asked." Ind. Evidence Rule 103(a)(2).

Wade contends that the trial court abused its discretion when it refused to allow Wade to testify about the nature of her break-up with Bernard. In particular, Wade argues that such testimony should have been admitted “to fill in the background of the narrative and give it interest, color, and lifelikeness.” Appellant’s Brief at 8 (quoting McFarland v. State, 27 Ind. 105, 390 N.E.2d 989, 993 (1979) (quoting I McCormick § 184 at 774 (2d ed. 1972))).² She further contends that the trial court should have allowed defense counsel, “at the very least, to explain to the Court why he was asking those questions.” Appellant’s Brief at 9.

Wade’s argument on this issue is unclear. In her brief, she does not overtly challenge any of the elements that the State was required to show to support a conviction. Thus, to the extent Wade argues that her relationship with Bernard and the ending of that relationship are relevant to the elements required to prove the offense of identity deception, Wade has failed to support such an argument with cogent reasoning. As such, the argument is waived. See Ind. Appellate Rule 46(A)(8)(a).

And to the extent Wade maintains that such testimony should have been admitted as “background” regardless of its relevance, again, Wade has not supported the argument with cogent reasoning. Thus, the argument is waived. See App. R. 46(A)(8)(a). Waiver notwithstanding, as background, evidence regarding the nature of Wade’s break-up with Bernard may indeed have added interest, color, and lifelikeness to the case. But McFarland addressed the admission, not the exclusion, of such evidence. Thus,

² In her brief, Wade’s quotation of McFarland does not accurately reproduce the language from that case, nor does it reflect omissions from the source language. Although those errors in the quotation do not materially alter the meaning from the source, we strongly encourage counsel, when quoting, to do so carefully and accurately. See Ind. Professional Conduct Rule 3.3(a)(1).

McFarland does not stand for the proposition that the exclusion of background evidence is reversible error. Further, the evidence at issue, by its nature as background evidence, does not bear on any of the elements necessary to prove identity deception. And Wade has not demonstrated how such evidence was necessary to assert any particular defense at trial. Thus, the error, if any, of excluding background testimony regarding the break-up between Wade and Bernard is harmless.

Issue Two: Inconsistent Judgments

This court has described our review of an inconsistent judgment claim as follows:

Verdicts so extremely contradictory and irreconcilable may require corrective action. However, where the trial of one defendant results in acquittal of some charges and convictions on others, the results will survive a claim of inconsistency where the evidence is sufficient to support the convictions. We will not engage in speculation about the jury's thought processes or motivation.

Simmons v. State, 828 N.E.2d 449, 455 (Ind. Ct. App. 2005) (internal citations omitted).

A claim of inconsistent verdicts and our analysis of that claim are the same, whether the trial was to a jury or the bench. See Vela v. State, 832 N.E.2d 610, 614 (Ind. Ct. App. 2005) (applying inconsistent verdicts analysis to similar claim regarding bench trial).

Wade contends that the trial court rendered inconsistent judgments when it found her guilty of identity deception but acquitted her on the forgery charge. Specifically, she asserts that “all of the elements of the Identity Deception [charge] are conditioned on the allegations that [Wade] forged [Bernard's] name in order to commit the Identity Deception.” Appellant's Brief at 11. But Wade provides no further analysis of the evidence or citations to the record in support of that argument. As such, the argument is waived. See App. R. 46(A)(8)(a).

Waiver notwithstanding, Wade's contention is without merit. In order to prove identity deception, as a Class D felony, the State was required to show that Wade knowingly or intentionally used Bernard's identifying information without her consent with the intent to defraud, assume the identity of, or profess to be another person. See Ind. Code § 35-43-5-3.5. And in order to prove forgery, as a Class C felony, the State was required to prove that Wade, with the intent to defraud, made or uttered a credit card application that purported to have been made by Bernard. See Ind. Code § 35-43-5-2(b)(1).

As Wade acknowledges, the forgery count requires proof of an element, the making or utterance of a writing, which is not required to prove identity deception. By acquitting Wade of forgery but convicting her of identity deception, the trial court apparently found that the State had not proved the writing element of the forgery count. But Wade testified that she charged purchases to a Capitol One account that was in Bernard's name. Wade also testified that she had opened an account in her name with Bernard as an authorized user, but the only evidence of a Capitol One account presented to the trial court showed an application opened in Bernard's name. And Wade admitted that she had on occasion signed Bernard's name to make purchases. The evidence most favorable to the judgment supports Wade's conviction for identity deception. Thus, Wade's contention that the judgments are irreconcilable must fail.

Affirmed.

DARDEN, J., and BROWN, J., concur.